

CHAPTER NO. 146

HOUSE BILL NO. 3272

By Representative Ronnie Davis

Substituted for: Senate Bill No. 3228

By Senator Haun

AN ACT to amend Chapter 104 of the Acts of 1903; as amended by Chapter 539 of the Private Acts of 1953; Chapter 292 of the Private Acts of 1967; Chapter 278 of the Private Acts of 1978 and Chapter 32 of the Private Acts of 1993; and any other acts amendatory thereto, relative to the City of Newport's civil service system.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Chapter 104 of the Acts of 1903; as amended by Chapter 539 of the Private Acts of 1953; Chapter 292 of the Private Acts of 1967; Chapter 278 of the Private Acts of 1978; Chapter 32 of the Private Acts of 1993; and any other acts amendatory thereto is amended by deleting Section 12A in its entirety, and substituting instead the following:

Section 12A. Civil Service. Be it further enacted, that:

(1) Civil service board. There is hereby created a system of civil service for the City of Newport. A civil service board, hereafter referred to as "the board" to consist of three (3) members is hereby created to administer the system of civil service. One (1) member of the board shall be appointed by the governing body, one (1) member of the board shall be elected by the members of the classified service, and the third member shall be elected by the two (2) members of the board already appointed. No member of the classified service, or of the governing body of Newport, may be a member of the board. The board members so appointed shall be citizens of the United States, electors of Cocke County, and eligible to vote in city elections. Prior to any appointment to the board, the candidate is to be contracted to confirm he/she is willing to serve on the board. The board members shall receive for their services the fee designated by the governing body.

The three (3) members thus appointed to the board shall serve as board members for a period of three (3) years, or until their successors are appointed and qualified. On or before the expiration of the term of each board member, his/her successor shall be selected in the same manner as the prior selection of the board member whose term thus expires, to the end that the successor to the member appointed by the city governing body shall likewise be appointed by that body, the successor to the member elected by the classified service shall likewise be elected by the classified service, and the successor to the member appointed by the two (2) other board members shall likewise be appointed by the two (2) other board members. Each term shall expire on December 31. All current appointments expire November-December, 2002. When the charter change becomes effective, the existing board members will draw lots: 1, 2, 3. The number drawn will signify the year(s) until December 31 remaining for that

individual's term. The existing board members appointed by the governing body will draw lots: 1, 2. The board will establish the lot number that determines the member to be considered as the one appointed by the governing body.

Any member of the board may be removed from office by the governing body of Newport for incompetence, dereliction of duty, malfeasance in office or upon conviction of any crime involving moral turpitude. Provided, however, that no member of the board shall be removed until charges shall have been preferred in writing, and due notice and a full public hearing had before the governing body of the City of Newport; provided further, that such removal shall be for a period of ten (10) days, during which time a member so removed shall have the right of appeal to the Chancery Court of Cocke County, Tennessee, which court shall thereupon proceed to hear and determine such appeal; provided, however, that such hearing shall be confined to the determination of whether the order of removal made by the governing body of the City of Newport was or was not made in good faith for proper cause, and no appeal to such court shall be taken except upon such grounds, and the decision of such court shall be final.

The members of the board shall devote due time and attention to the performance of the duties hereinafter specified and imposed upon them by the act. Two (2) members of this board shall be sufficient for the decision of all matters and the transaction of all business to be decided or transacted by the board under and by virtue of the provisions of the act. Provided, however, that due notice of all meetings shall be given so that all three (3) board members may have an opportunity to be present. Provided, further, that the board shall transact no business and make no decisions until and except while all three (3) board members shall have taken office and remain qualified to act. Confirmation of original or succeeding board members by the legislature shall not be required.

(2) Officers and employees subject to civil service. At the time of this charter change, the existing chief of police will remain a member of the classified service. Any new appointment to the position of chief of police shall be exempt from civil service. Newly hired officers must complete a one (1) year probationary period. At the end of the probationary period, officers shall be included under civil service upon notification to the board by the chief of police of successful completion of the probationary period. All other officers working on a paid full-time basis in the police department in the City of Newport shall be known as the classified service and subject to civil service.

(3) Appointments, promotions, discharges, etc., how made. The civil service board shall develop additional standards for each position that will be used to rank eligible candidates for each position. Such standards may include a written test, interview, assessment center, etc. Seniority will be used as only one part of the scoring system, or as a tie breaker. In the event of a vacancy in one (1) position, the "rule of three" shall apply which will allow the chief of police to select from the top three (3) candidates. In the event of two (2) openings, the "rule of 5" shall apply which would allow the chief of police to choose from the top five (5) candidates. The chief of police may not select any candidate below three (3) or five (5).

The governing body shall adopt an organizational structure for the police department, defining the rank structure and the number of positions of each rank. Any future changes shall be submitted to the governing body for its approval. Decisions will be based on positions, not the person holding or eligible for the position. During the implementation phase of the new organizational structure, no employee shall have his/her pay reduced due to an elimination of a position of rank. The new organizational structure shall not take effect until the civil service board has developed standards and a process for testing those standards. Once that process has been completed, existing personnel shall test for the new positions. Alternatively, once the governing body has established the new organizational structure, incumbents in existing positions shall continue to hold their rank until termination, including retirement or resignation, or their promotion to a higher rank.

The chief of police shall be selected from either within the classified service or from among qualified applicants. The person so selected shall have the option of entering into a three (3) year contract with the City of Newport or opt for a super-majority of four (4) of the governing body to be removed from office.

(4) Functions and duties of the civil service board. The board shall organize by forthwith electing one of its members as chairman and shall hold regular meetings at least once a month, and such additional meetings as may be required for the proper discharge of its duties. The board shall appoint a secretary who shall keep its records, preserve all reports made to it, superintend and keep a record of all examinations and perform such other duties as the board may prescribe.

It shall be the duty of the board:

(a) To make suitable rules and regulations not inconsistent with the provisions of this act. Such rules and regulations shall provide in detail the manner in which examinations may be held and appointments, promotions, transfers, demotions, reinstatements, suspensions and discharges shall be made, and may also provide for any other matters connected with the general subject of personnel administration; such rules and regulations shall include the methods used in determining the standard for each job classification in the classified service. These rules and regulations may be changed from time to time by the board and shall be printed or mimeographed for free public distribution.

(b) The rules and regulations shall include provisions so that seniority may not be lost by any person holding a position in the classified service, if such person leaves the classified service to enter into military service of the United States under the laws of the United States and of the State of Tennessee that govern military leave on the part of employees; provided that such person returns to the classified service within the time prescribed by those laws following his honorable discharge or release from such service. In such cases, the period of military service shall be included in the period of seniority of such person to the extent required in those laws.

(c) The board shall make investigations and report upon all matters touching the enforcement and effect of the provisions of this act, and the rules and regulations prescribed hereunder, inspect all institutions and employment affected by this act, and ascertain whether the act and all such rules and regulations are being obeyed. Such investigations shall be made by the board on its own motion, and must also be made on petition of any person covered under civil service, duly verified stating that irregularities or abuses exist, or setting forth in writing the necessity for such investigation. In the course of such investigation, the board shall have the power to administer oaths, subpoena and require the attendance of witnesses, and require the production of books, papers, documents and accounts appertaining to the investigation. The failure upon the part of any person to comply with such subpoena or demand shall be deemed a violation of this act.

(d) All hearings and investigations before the board shall be governed by this act and by the rules of practice and procedure to be adopted by the board. The board, or its designated hearing officer, shall not be bound by technical rules of evidence. No informality in any procedure or hearing, shall invalidate any order, decision, rule or regulation made or approved by the board; provided, however, that no decision shall be binding unless concurred in by at least two (2) of the board members.

(e) To hear and determine appeals or complaints relative to the allocation of positions, the determination of job changes, the furnishing of rosters and the position of members of the classified service, and of applicants on such roster, and such other matters relating to the administration of this act as may be referred to the board.

(f) To make provisions that a person or persons laid off because of curtailment of expenditures, reduction in force, and for like causes, shall be the last person or persons including probationers, that have been appointed to the respective department of the classified service. Rules and regulations shall provide that a person or persons so laid off shall be reinstated before any new appointments to the department shall be made.

(g) To keep such records as may be necessary for the proper administration of this act.

(5) Qualifications of applicants.

(a) An applicant must have a high school diploma or GED.

(b) Every applicant for a position in the classified service must meet the minimum standards as set by the Tennessee Training and Peace Officers Commission (POST) and minimum standards established by the board.

(6) Tenure of office of employees in the classified service. The tenure of everyone holding office, place, position or employment under the provisions of

this act, shall be for and only during good behavior. Any such person may be removed or discharged, suspended without pay, demoted or reduced in rank, or deprived of vacation privileges or other special privileges for any of the following reasons, but for no other reasons:

(a) Dishonesty, intemperance, immoral conduct, insubordination, or any other act of omission or commission tending to injure the public service; or any other willful failure on the part of the employee to conduct himself/herself properly, or any willful violation of the provisions of this act or the rules and regulations to be adopted hereunder.

(b) Conviction of a felony, or a misdemeanor involving moral turpitude or a misdemeanor reflecting upon the ability to perform public service or one for which a jail sentence is or may be imposed.

(c) Any other act or failure to act which in the judgment of the board, is sufficient to show the offender to be an unsuitable and unfit person to be employed in the classified service, or any action that, under POST requirements, would have prevented that person from becoming certified or would have required a waiver in order to become certified.

(7) Removal. No person in the classified civil service who shall have been permanently appointed or inducted into civil service under the provisions of this act shall be removed, suspended or discharged except for cause, and only upon the written accusation of the appointing power, or accusation of the appointing power or duly authorized supervisors. A written statement of which accusation shall be served upon the accused, and a duplicate filed with the board. The chief of the police department may suspend a member of the department pending the confirmation of the suspension by the regular appointing power under this act which must be within ten (10) days. Any person so removed, suspended or discharged may within twenty (20) days from the time of his removal, suspension or discharge, file with the board a written demand for an investigation, whereupon the board shall conduct such investigation. The investigation shall be confined to the determination of whether such removal, suspension or discharge was or was not made for political reasons and was or was not made in good faith for cause. After such investigation, the board may affirm the removal, or if it shall find that the removal or suspension was made for political reasons, or was not made in good faith for cause, shall order the immediate reinstatement or re-employment of such person in the office, place, position or employment from which such person was removed, suspended, or discharged, which reinstatement shall, if the board so provides in its discretion, be retroactive, and entitle such person to pay or compensation from the time of such removal, suspension or discharge. The board in its discretion in lieu of affirming or reversing the removal, suspension or discharge may modify the order by directing a suspension without pay for a given period and subsequent restoration of duty, grade or pay; and the findings of the board shall be certified in writing to the appointing power and shall be forthwith enforced by such authority. All investigations made by the board pursuant to the provisions of this section shall be by public hearing, after reasonable notice to the accused of the time and place of such hearing, at which hearing, the accused shall be afforded an opportunity of appearing in person and by counsel and presenting his/her

defense. At any such hearing, the testimony of all witnesses shall be taken in writing and a record made of all proceedings. From any order adverse to the accused, the latter may appeal to the Chancery Court of Cocke County, Tennessee. Such appeal shall be taken by serving the board, within ten (10) days after the entry of such order, a written notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the board affecting or relating to such order be filed by the board in such court. The board shall within twenty (20) days after the filing of such notice, make, certify and file such transcript with such court. The chancery court shall thereupon proceed to hear and determine such appeal; provided, however, that such hearing shall be confined to the determination of whether the order of removal, discharge or suspension made by the board was or was not made in good faith for cause, and no appeal to such court shall be taken except upon such ground, or grounds, and the decision of said court shall be final.

(8) Appointments to vacant positions; certification from lists. Whenever a position in the classified service becomes vacant, the governing body of the City of Newport shall make requisition upon the board for the name and address of a person eligible for appointment thereto.

(9) False marking, grading, etc., prohibited. No board member or any other person, shall, by himself/herself or in cooperation with one (1) or more persons, defeat or deceive any person in respect to his right of examination or registration according to the rules and regulations of this act, or falsely mark, grade, estimate or report upon the examination or proper standing of any person examined, registered or certified pursuant to the provisions of this act or and in so doing, or make any false representation concerning the same or concerning the person examined, or furnish any person any special or secret information for the purpose of improving or injuring the prospects or chances of any person so examined, registered or certified, or persuade any other persons, or permit or aid in any manner any person to impersonate any other person, in connection with any examination or registration or application or request to be examined or registered.

(10) Political activities prohibited.

(a) No person shall be appointed or promoted to, or demoted or dismissed from, any position in the classified service or in any way favored or discriminated against with respect to the employment in the classified service because of his/her political or religious opinions, but all employees must take an oath to support the Constitution of the United States.

(b) No person shall seek or attempt to use any political endorsement in connection with any appointment to a position in the classified service.

(c) No person shall use or promise to use, directly or indirectly any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service or an increase in pay

or other advantages in employment in any such position either for the purpose of influencing the vote or political action of any person, or for any person, or for any consideration, or otherwise.

(d) No employee in the classified service and no member of the board shall while on duty or acting in an official capacity, solicit or take any part in soliciting any assessment, subscription or contribution for any political organization or any political purpose.

(e) It shall be the duty of the board to supervise the execution of the foregoing civil service provisions of this act and the rules made thereunder and it shall be the duty of all persons under the provisions of this act and in the service of the police department to comply with such rules and to aid in their enforcement.

(11) Authority of the board to obtain assistance. The board shall be authorized to employ such clerical or administrative help as is necessary in carrying out the duties assigned to it, and shall also be authorized to retain legal counsel and engage actuarial experts to the extent necessary in carrying out the functions assigned to the board.

(12) Penalty for failure to comply with act. Be it further enacted: The failure on the part of the board, or any member thereof, or on the part of the governing body of the City of Newport, or any member thereof, to comply within the terms of this act, shall be considered a violation of this act.

(13) Accommodations for board. The governing body of the City of Newport shall provide the board with suitable and convenient rooms and accommodations and cause the same to be furnished, heated and lighted and supplied with all office supplies and equipment necessary to carry on the business of the board and shall either provide directly or provide the funds for the payment of such necessary clerical, administrative, actuarial and legal assistance as may be employed by the board under the provisions of this section, and the failure on the part of the governing body to do so shall be considered a violation of the act.

(14) City's authority to appropriate funds. The governing body of the City of Newport shall have authority to appropriate from the general funds of said city a sum sufficient to carry out the purposes of this act, and shall make such appropriation. Within thirty (30) days after the effective date of this act, it shall be the duty of the governing body of the City of Newport, subject to the provisions of this act, to appoint and create the board as provided in subsection (1) of this section and the failure upon the part of said governing body, or any member of it so to do, shall be deemed a violation of this act.

(15) Immediate organization required. Be it further enacted: It shall be the duty of the board appointed subject to the provisions of this act to organize immediately and to see that the provisions hereof are carried into effect, and to make suitable rules and regulations to effect said purposes; and the failure upon the part of said board, or any individual member thereof to do so, shall be deemed a violation of this act.

SECTION 2. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the legislative body of Newport. Its approval or nonapproval shall be proclaimed by the presiding officer of Newport and certified to the secretary of state.

SECTION 3. For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective as provided in Section 2.

PASSED: May 15, 2002



JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES



JOHN S. WILDER  
SPEAKER OF THE SENATE

APPROVED this 22<sup>nd</sup> day of May 2002



DON SINQUISTE, GOVERNOR